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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,832

10/07/2004

Alvin Liknes

04-01021

5831

34111

7590

07/21/2008

Maxey Law Offices, PLLC  
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CLEARWATER, FL 33760

EXAMINER

BERTHEAUD, PETER JOHN

ART UNIT

PAPER NUMBER

3746

MAIL DATE

DELIVERY MODE

07/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/711,832	<b>Applicant(s)</b> LIKNES, ALVIN	
	<b>Examiner</b> PETER J. BERTHEAUD	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-8 in the reply filed on 5/6/2008 is acknowledged. Therefore, claims 9-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soderberg 4,490,095 in view of Watson 3,646,833.

Soderberg discloses a hydraulic fluid displacement pump comprising: a pump body 24 having an exterior surface and defining an axial bore (see 53) comprising a first chamber 52 and a second chamber (see chamber which houses 98 in Fig. 1) which are separated by a diametrically reduced section 96 of said axial bore, said pump body further defining at least one gas vent 44 extending from said exterior surface into said first chamber 52, a fluid inlet port 66 extending from said exterior into said second chamber, and a fluid discharge port 75 extending from said exterior thereof into said second chamber; a hydraulic head (see 99, 98, and bottom end of 53 in Fig. 1) attached

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to said pump body; a displacement plunger 72, said displacement plunger extending from said hydraulic head through said axial bore (53) and which is operated by said hydraulic head to be reciprocated within said axial bore, said displacement plunger 72 defining a vent passage (see how slanted top end of piston 72 helps to define a passage, with the help of chamber 52 and conduit 44, that vents gas) through a distal end thereof; a hydraulic circuit (see elements above reference numeral 18 in Fig. 1), wherein said hydraulic circuit is connected to said hydraulic head (via 28); a fluid discharge conduit 28 connected to said fluid discharge port 75; a first check valve 50 inline with said fluid discharge conduit 28; and a lift tube 68, wherein said lift tube 68 is in fluid communication with said discharge conduit 28. Furthermore, it would be obvious that first and second check valves could be placed inline with said fluid discharge conduit 28 and connected to said fluid inlet port 66 because placing check valves in fluid conduits to prevent backflow is well known in the art. Soderberg further discloses that said first chamber 52 and said second chamber are of diameters which are greater than the diameter of said displacement plunger 72; wherein said first chamber 52 and said second chamber are fluidically sealed from one another by said displacement plunger (see how plunger 72 seals against seals 88 and 85) extending through said diametrically reduced section. Soderberg further discloses a casing 26, 32 having an interior volume, said casing 26, 32 enclosing said pump body 24 and said hydraulic head within said interior volume, said casing 26, 32 defining a first fluid passage in fluid communication with said interior volume at a first end thereof and a second fluid passage in fluid communication with said interior volume at a second end thereof (see

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how 32 has passages throughout its length); and wherein said lift tube 68 is attached to said casing (26) and is sealed from said interior volume thereof. However, Soderberg does not teach the following claimed limitations taught by Watson.

Watson teaches a hydraulic circuit comprising a prime mover, a hydraulic valve assembly (see bottom half of Fig. 1), and a hydraulic cylinder 52 which is fitted with a floating piston 54, wherein said hydraulic circuit is connected to a hydraulic head 36; wherein said hydraulic circuit utilizes two separate working fluids (see col. 2, lines 50-63); wherein one working fluid is of a lower specific gravity than the other working fluid; further comprising a control system (see bottom left side of Fig. 1, and col. 2, lines 64-75) operatively connected to said hydraulic circuit to control the reciprocation of a displacement plunger (see 42). Watson discloses the claimed invention except for there being a pair of hydraulic cylinders. It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement two hydraulic cylinders in order to have controllable hydraulic pressure on each side of the piston 42 (as opposed to gravity), since such a modification would amount to a mere duplication of parts. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art (*In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)) (see MPEP 2144.04 VI. B – Duplication of Parts).

Therefore, it would have been obvious at the time of invention to have modified the pump assembly of Soderberg by implementing a hydraulic circuit comprising a prime mover, a hydraulic valve assembly, and a pair of hydraulic cylinders, which uses

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two different working fluids, as taught by Watson, in order to more efficiently control the stroke of the plunger (see col. 1, lines 60-72).

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Soderberg 4,490,095 in view of Watson 3,646,833, and in further view of Potschin 6,142,443.

Soderberg in view of Watson discloses the invention as discussed above.

However, Soderberg in view of Watson does not teach the following claimed limitations taught by Potschin.

Potschin discloses a valve for controlling fluids comprising a hydraulic fluid, wherein the hydraulic fluid is diesel fuel (see col. 2, lines 45-51).

Therefore, it would have been obvious at the time of invention to have modified the pump assembly of Soderberg in view of Watson by implementing diesel fuel as one of the hydraulic fluids, as taught by Potschin, because of its physical properties. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use diesel fuel in the hydraulic circuit in order to achieve minimum wear on various components due to its lubrication characteristics. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (*In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)) (see MPEP 2144.07 - Art Recognized Suitability for an Intended Purpose).

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER J. BERTHEAUD whose telephone number is (571)272-3476. The examiner can normally be reached on M-F 9am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/  
Supervisory Patent Examiner, Art  
Unit 3746

PJB  
/Peter J Bertheaud/  
Examiner, Art Unit 3746